

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.132 of 2014

In
Civil Writ Jurisdiction Case No.13896 of 2010

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1. Smt. Kalawati Devi daughter of late Raghunandan Giri, wife of Shiv Shankar Giri resident of Village +P.S. - Khudwan, District - Aurangabad.
 2. Most. Tetri Kuer widow of late Raghunandan Giri resident of Village+P.S. - Khudwan, District - Aurangabad.

... .. Petitioner/s

Versus

1. Rajeshwar Prasad Shahi son of late Manki Singh resident of Mauza+P.S. - Khudwan, District - Aurangabad.
- 2(a) Vinod Kumar Sinha
- (b) Pramod Prasad Sinha
- (c) Sunil Kumar Sinha
- (d) Rajeev Kumar Sinha,
All sons are Lakhan Prasad Sinha & resident of vill. + Mohalla-Navadih Road Ganj Muhalla, P.S.-Town, District-Aurangabad
- (e) Punam Kumari Sinha, D/o Lakhan Prasad Singh, W/o Arun Kumar Sinha, resident of vill.+P.S.-Sasaram, Distt.-Rohtas
- (f) Gudiya Kumari Sinha, D/o Lakha Pd. Sinha, W/o Gudiya Kumari Sinha, vill+P.S.-Daltanganj, Distt.-Plamu (Jharkhand)
3. Mohan Prasad Sinha, sons of late Ramagya Prasad
4. Virendra Prasad Sinha son of late Madan Prasad Sinha
5. Sanjiv Prasad Sinha son of late Basant Sinha
All resident of Village - Khudwan, P.S. - Khudwan, District - Aurangabad.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mrs.Leelawati Kumari, Advocate
For the Respondent No. 5	:	Mr. J.S.Arora, Sr. Advocate
		Ms. Manu Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 08-11-2019

The present review petition has been filed seeking review



of the order dated 4.2.2013 passed by a coordinate Bench of this Court in CWJC No. 13896 of 2010 whereby and whereunder the challenge of the writ petitioner to the order dated 4.6.2010, passed by the Additional Subordinate Judge 6th, Aurangabad in Title Suit No. 316/58 of 2007-2009, allowing the application under Order 1 Rule 10 of the Code of Civil Procedure filed on behalf of the Respondent Nos. 1 and 2 for being added as party to the said suit, has resulted in the writ petition being allowed and the aforesaid order dated 4.6.2010, passed by the learned court below, being set aside.

2. It would be appropriate to reproduce the relevant portion of the order under review dated 4.2.2013 hereinbelow:-

“This writ application has been filed challenging the order dated 4.6.2010, passed by the Additional Subordinate Judge, 6th, Aurangabad, in Title Suit No. 316/58 of 2007/2009 allowing the application under Order I Rule 10 filed on behalf of respondent nos. 1 and 2. The suit has been filed for a declaration of title with respect to Khata No. 71, Plot No. 122. The respondent nos. 1 and 2 have filed a petition claiming that they



have an interest in Plot No. 121 of Khata No. 78 and as such they ought to be made party in the present suit as their rights in the said Plot No. 121 shall be affected. In the application to be added as party, it has been mentioned that since the plaintiffs have mentioned in body of their plaint that the lands of Khata No. 78, Plot No. 121 belongs to him, the respondents have made a prayer that they may be added as party as they have interest in Plot No. 121.

Learned counsel for the petitioner submits that a Title Suit with respect to Khata No. 78, Plot No. 121 in village Sakarkhori was filed in which ancestors of respondent nos. 1 and 2 were the plaintiffs and the petitioner's father was the defendant numbered as Title Suit No. 26 of 1963 19 of 1967. The said suit was dismissed and it was held that the suit is barred by limitation and adverse possession. The judgment and order is dated 14.3.1970, passed by the Additional Munsif,



Aurangabad. This Court has no idea as to whether there is any appeal or second appeal pending in this matter. Nevertheless, as the matter stands today the respondent nos. 1 and 2 have no cause of action in view of the judgment which is contained in Annexure-4. In any event, the suit is restricted to declaration of title with respect to Plot No. 122, Khata No. 71, measuring 15 decimals and as such there is no occasion for the Court to enter into the question of title with respect to Khata No. 78, Plot No. 121.

For the reasons aforesaid, this Court finds that the plaintiffs have not claimed any relief against respondent nos. 1 and 2, nor have the respondent nos. 1 and 2 been able to prima facie show any title or right over Plot No. 122 and as such they are not necessary parties in the suit. This Court accordingly, sets aside the order dated 4.6.2010, passed in Title Suit No. 316/58 of 2007/2009.



This writ application is allowed.”

3. The review petitioners i.e. the Respondent Nos. 1 and 2 to the writ petition have filed the present review petition primarily on the ground that the order under review dated 4.2.2013 has been passed without issuing notice and without granting an opportunity of hearing to the review petitioners.

4. It is submitted by the learned counsel for the review petitioners that the order under review dated 4.2.2013 is fit to be recalled and the review petitioners are required to be granted an opportunity of hearing inasmuch as the said order dated 4.2.2013 has been passed ex parte i.e. without issuing notice to the review petitioners.

5. At this juncture, this Court had asked the learned counsel for the review petitioners to address the Court on the merits of the case so that this Court can come to a conclusion as to whether it would be fruitful to recall the order under review dated 4.2.2013 and hear the writ petition afresh or whether the final outcome would be the same even after hearing the writ petition afresh.

6. The learned counsel for the review petitioners has addressed this Court on merits and has submitted that a bare perusal of the plaint of the aforesaid Title Suit No. 316 of 2007



(Annexure-1 to the review petition), especially, paragraph no. 10 thereof would show that there is reference to plot no. 121, in which the review petitioners have got interest, hence, the review petitioners are required to be added as party to the suit as their right in the said plot no. 121 shall be effected.

7. Upon a query made by this Court, the learned counsel for the review petitioners has fairly submitted that in case, this Court makes an observation to the effect that the suit in question shall be restricted to declaration of title with respect to plot no. 122, khata no. 71 and the said suit shall have nothing to do with khata no. 78, plot no. 121, the review petitioners would be satisfied.

8. I have heard the learned counsel for the parties and perused the materials on record.

9. A bare perusal of the plaint of the suit in question i.e. Title Suit No. 316 of 1958 of 2007-09 would show that the prayer made in the said suit is for declaration of title of the plaintiff-writ petitioner of the said suit and non-title of the defendants-respondent nos. 3 to 6 to the writ petition with regard to the suit property mentioned in Schedule A i.e. pertaining to mauza-Shankarkhori Holichak Manaura, P.S.-Obra, District-Aurangabad, appertaining to katha no. 71, plot



no. 122. In fact, in paragraph no. 10 of the plaint, as aforesaid, it has been merely stated that the suit property mentioned in Schedule-A i.e. plot no. 122 is bounded on three sides by other plots, out of which on the northern side, plot no. 121 is situated, on the southern side plot no. 143 is situated and on the eastern side, plot no. 142 is situated and nowhere in the plaint, it has been claimed that the plaintiffs have right, title or interest in plot no. 121, i.e. the plot in which the review petitioners claim to be having interest. Thus, it is absolutely clear from the records of the case that as far as the plot no. 121, khata no. 78 is concerned, neither the plaint of the aforesaid Title Suit No. 316 of 1958 of 2007-2009 bears any pleading regarding the plaintiffs having interest over the same nor the plaintiffs of the said suit have made any prayer for declaring their title over the said plot no. 121. In such view of the matter, this Court is of the view that there is no occasion or need for adding the review petitioners as parties to the aforesaid suit in question, thus, the order under review dated 4.2.2013, passed in CWJC No. 13896 of 2010 does not suffer from any infirmity, as also does not warrant any interference inasmuch as even on merits the review petitioners have failed to demonstrate as to how the said order under review dated 4.2.2013 is perverse and illegal.



10. In any view of the matter, since it has been contended on behalf of the review petitioners that it be clarified that the aforesaid suit in question bearing Title Suit No. 316 of 1958 of 2007-2009 is restricted to declaration of title with respect to plot no. 122, khata no. 71, this Court had put a query to the learned Senior Counsel, appearing for the respondents to the present review petition, as to whether the respondents have any objection in case the aforesaid clarification is made by this Court, the learned Senior Counsel has submitted that since the prayer in the plaint itself is restricted to declaration of title with respect to khata no. 71, plot no. 122, the same is self-clarificatory. In view of the stand taken by the learned Senior Counsel for the Respondents, this Court has no hesitation in observing that the aforesaid suit bearing Title Suit No. 316 of 1958 of 2007-2009 has been filed only for declaration of title of the plaintiff-the writ petitioner-the respondent no. 1 herein with respect to the land appertaining to khata no. 71, plot no. 122, mauza-Shankarkhori Holichak Manaura, P.S.-Obra, District-Aurangabad.

11. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present review petition, hence, the same stands



dismissed, however, with the aforesaid clarification and observation made in the preceding paragraph.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.3.2020
Transmission Date	NA

